

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DARREN HARRIS,

Plaintiff,

v.

KIM, et al.,

Defendants.

Case No. 1:05-cv-00003-AWI-SKO (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Doc. 163)

Plaintiff Darren Harris ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2005. This action is proceeding on Plaintiff's fourth amended complaint against Defendants Olivarria, Williams, and Kim for violation of the Eighth Amendment, and against Defendants Olivarria and Lowden for violation of the First Amendment. (Doc. 87.) This action was previously scheduled for trial on April 21, 2015, but on September 25, 2014, based Defendant Kim's deployment to Afghanistan, the Court vacated the trial date and stayed the case pursuant to 50 App. U.S.C. § 522(b), Servicemembers Civil Relief Act of 2003. (Doc. 150.) Pursuant to the stay order, Defendants Olivarria, Williams, Lowden, and Kim ("Defendants") are required to file a status report on or before June 1, 2015.

On March 5, 2015, Plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The

1 Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it
2 will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v.*
3 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must
4 evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims
5 *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation
6 and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and
7 they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted);
8 *Wilborn* 789 F.2d at 1331.

9 In the present case, the Court does not find the required exceptional circumstances. Even
10 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations
11 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
12 similar cases almost daily. Further, the Court cannot make a determination that Plaintiff is likely
13 to succeed on the merits, and based on a review of the record in this case, the Court does not find
14 that Plaintiff cannot adequately articulate his claims. *Palmer*, 560 F.3d at 970.

15 While the Court recognizes that Plaintiff is at a disadvantage due to his *pro se* status and
16 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel.
17 *See Wilborn*, 789 F.2d at 1331 (“Most actions require development of further facts during
18 litigation and a *pro se* litigant will seldom be in a position to investigate easily the facts necessary
19 to support the case.”) The test is whether exceptional circumstances exist and here, they do not.
20 Plaintiff’s motion for the appointment of counsel is HEREBY DENIED, without prejudice.

21
22 IT IS SO ORDERED.

23 Dated: April 7, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE